IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

WP(C).No. 31908 of 2007(W)

AGAINST THE ORDER IN IA 2861/2004 IN
OS.75/1999 of PRINCIPAL SUB COURT, PALAKKAD

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PETITIONER:

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1. NARAYANAN, S/O.MURUGANKUTTY, PORUVAYIL VEETTIL, AYAKKAD AMSOM, ALATHUR TALUK, PALAKKAD.

2. VINEESH, S/O.NARAYANAN, DO. DO. DO.

3. DAISY, D/O.NARAYANAN, DO. DO. DO.

BY ADV. SRI.P.R.VENKETESH

RESPONDENTS:

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1. SATHI DEVI, W/O.LATE VISWANATHAN, PORUVAYIL, AYAKKAD AMSOM DESOM, ALATHUR TALUK.

2. PRASANNA, D/O.VISWANATHAN, 18/780, ENGLISH CHURCH ROAD, YAKKARA AMSOM, PALAKKAD TALUK.

3. VINOD, S/O.VISWANATHAN DO. DO.

4. MUHAMMED SALI, S/O.K.A.MUHAMMED, FLAT NO.5E, KUTTIKARAN TOWERS, PROVIDENCE ROAD, KOCHI-18.

BY SR. ADV SRI.N.SUKUMARAN
BY ADV SRI.S.SHYAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P(C) 31908/07

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE PETITION IN I.A. 2861/04 FILED BEFORE THE SUB COURT, PALAKKAD

EXT.P2: -DO- OF THE COUNTER AFFIDAVIT FILED TO I.A 2861/04

EXT.P3: -DO- OF THE ORDER DT. 4.8.2007 ON THE FILES OF SUB COURT, PALAKKAD

jj /TRUE COPY/

P.A. TO JUDGE

M.N. KRISHNAN, J.

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W.P.C. NO. 31908 OF 2007

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Dated this the 6th day of December, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Subordinate Judge, Palakkad in I.A.2861/04 in O.S.75/99. By the proposed amendment application the plaintiff wants to incorporate an amendment thereby deleting item No.3 of the property in the schedule. It is submitted that it is not a partible item. It was opposed by the contesting defendants on the ground that item No.3 is also partible and therefore amendment shall not be made. The Court below on a consideration of the materials available dismissed the application. It is true that the Court may have to take a decision on the partibility or otherwise of item No.3 of the plaint schedule property. When the plaintiff does not want a particular item to be partitioned and it is allowed to be retained in the plaint it may not be possible for him to adduce evidence against his pleadings. The question of partibility of item No.3 can be considered by permitting the

contesting defendants to file an additional written statement incorporating this property in the schedule and thereby it becomes a part of the suit for consideration for the reason in a suit for partition defendants also have the status of the plaintiff. Therefore, I set aside the order of the Court below, allow the amendment application with permission to the contesting defendants to file additional written statement incorporating item No.3 as part of the written statement schedule property and praying for division for which the plaintiff can be permitted to file a replication and the matter be decided in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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